

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 81 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ILAC LTD.

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

MR D.A. MEHTA, MR R.K. PATEL & MR KC PATEL
for Petitioner
MR B.J.SHELAT, instructed by MR M.R.BHATT
for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

Date of decision: 30/01/97

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Income Tax Appellate Tribunal, Ahmedabad has referred for the opinion of this Court the following two questions:-

1. "Whether, on the facts and circumstances of the case, the Tribunal was justified in law in disallowing gratuity liability of Rs. 22,473/- claimed u/s 28 read with Section 37 of the Act?"
2. "Whether on the facts and in the circumstances of the case, the Tribunal was justified in confirming the disallowance of weighted deduction u/s 35B of the Act on the amount of commission of Rs. 6,63,034/- paid in India for export of goods?"

The learned Counsel for the assessee points out that the question No.1 is squarely covered against the assessee by the ratio of the decision of the Supreme Court in Shree Sajjan Mills Vs. CIT, reported in 156 ITR 585, in which it was held that the right to receive the payment of gratuity accrues to the employee on his retirement or termination of service and the liability to pay gratuity becomes an accrued liability of the assessee when the employees retire or their services are terminated. Until then, the right to receive gratuity is a contingent right and the liability to pay gratuity continues to be a contingent liability qua the employer and such contingent liabilities do not constitute expenditure and cannot be the subject matter of deduction even under the mercantile system of accounting. In this view of the matter, the Tribunal was justified in disallowing the gratuity liability claimed under Section 28 read with Section 37 of the said Act. The question No.1 is therefore, answered in the affirmative against the assessee.

As regards the question No.2, it is pointed out by the learned Counsel for the assessee that the matter is covered against the assessee by the ratio of the decision of this Court in Isabgul Export Corporation Vs. CIT, reported in 205 ITR 227, in which it was held that the assessee would be entitled to weighted deduction under Section 35B(1)(a) of the Act only if the expenditure is of the nature referred to in clause (b) of Section 35B(1) of the Act. The commission paid in India for export of goods does not fall in clause (b) of Section 35B(1). The Tribunal was therefore, justified in confirming the disallowance of weighted deduction. The question No.2 is therefore, answered in the affirmative against the assessee. The reference stands disposed of accordingly.
